

*Amendment and Response to Office Action*  
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### REMARKS

The present application is directed to methods for the treatment of a disorder or condition and for the controlled release of therapeutic or diagnostic agents by administering a biocompatible, polymerizable, macromer composition containing at least one NO carrying region or NO modulating compound. Claims 18 and 20-24 are pending. Applicants hereby respectfully request entry of the amendments to Claims 18 and 23. No new matter is introduced by the amendments. Reexamination and reconsideration of the application are requested in view of the claim amendments and following remarks.

#### *Telephone Interview*

Applicants thank the Examiner for extending the courtesy of a telephone interview on April 11, 2005. As requested by the Examiner, applicants provide below remarks regarding the polymerizable, macromer compositions recited in Claims 18 and 20.

Under the guidelines of the International Union of Pure and Applied Chemistry (IUPAC), the term "macromer" is equivalent to the term "macromonomer" and denotes a polymer or oligomer whose molecules each have a polymerizable functional group that enables it to act as a monomer. After polymerization, the groups are part of the main chain of the final polymer. See Horie *et al.*, "Definitions of Terms Relating to Reactions of Polymers and to Functional Polymeric Materials (IUPAC Recommendations 2003)" Pure and Applied Chemistry, Vol. 76, No. 4, pp. 889-906, 2004 (Exhibit A). Applicants respectfully assert that the Horie *et al.* publication (submitted as Exhibit A) relies on earlier sources (see pp. 900 and 903-904) that define the term "macromonomer" as used in the present application. Thus, "polymerizable, macromer composition" recited in Claims 18 and 20 is, by definition, polymerizable to become a part of the main chain of the final polymer. The recited polymerizable, macromer composition comprises at least one NO carrying region or NO modulating compound.

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*Continued Examination under 37 C.F.R. 1.114*

The Examiner states that, in the Request for Continued Examination filed September 2, 2004, applicants requested consideration of amendment filed August 13, 2004. the Examiner notes that the last Amendment on record was filed May 24, 2004. The Examiner considers May 24, 2004 amendment and remarks on the merit. Applicants confirm that the Request for Continued Examination filed September 2, 2004, contained an unintentional typographical error. In the Request for Continued Examination, Applicants intended to request consideration of amendment filed May 24, 2004.

*Claim Rejections under 35 U.S.C. §112*

Rejection of Claim 18 under 35 U.S.C. §112, Second Paragraph

The Examiner rejects Claim 18 under 35 U.S.C. §112, second paragraph. The Examiner asserts that the specification does not reasonably provide enablement for prophylactic agents. Applicants amended Claim 18 to delete the term "prophylactic." Applicants assert that the amendment overcomes the rejection. Applicants request the Examiner to withdraw the rejection of Claim 18 under 35 U.S.C. §112, second paragraph.

Rejection of Claim 23 under 35 U.S.C. §112, First Paragraph

The Examiner rejects Claim 23 under 35 U.S.C. §112, first paragraph. The Examiner asserts the terms "adhere tissue, provide support for tissue or coat the tissue" in Claim 23 are vague and indefinite. Applicants amended Claim 23 to recite the phrase, "to form a tissue junction, to provide support for the tissue or to coat the tissue." Support for the term "to form a tissue junction" is found in the specification, for example, on page 16, line 13. The term "tissue junction" is clear and is defined in the specification, for example, on page 16, lines 7-14.

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Applicants respectfully assert that the term "to provide support for the tissue" is clear to one of ordinary skilled in the art. The term is defined in the specification, for example, on page 16, lines 26-32.

Applicants respectfully assert that the term "to coat the tissue" is clear to one of ordinary skilled in the art. The term is defined in the specification, for example, on page 17, lines 1-8.

In view of the foregoing amendments and arguments, applicants respectfully assert that Claim 23, as pending upon entry of the amendment, is definite. Applicants request the Examiner to withdraw the rejection of Claim 23 under 35 U.S.C. §112, first paragraph.

*Non-Statutory Double Patenting Rejection*

The Examiner provisionally rejects Claims 20-24 of the present application under the judicially created doctrine of obviousness-type double patenting over Claims 20-25 of co-pending U.S. Patent Application No. 10/129,418, which is commonly owned with the present patent application. The Examiner states that the conflicting claims have not in fact been patented (see p. 4, second paragraph, of the Office Action). The co-pending application was filed on May 17, 2002, has a later filing date than the present application, and is currently under examination (see current status information from Patent Application Information Retrieval (PAIR) system; Exhibit B). Applicants will resolve any double-patenting issues that may arise when claims are allowed in the co-pending patent application.


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### CONCLUSION

The foregoing is submitted as a full and complete response to the Office Action mailed January 11, 2005. Applicants assert that the claims are now in condition for allowance and respectfully request that the application be passed to issuance. If the Examiner believes that any informalities remain in the case, which may be corrected by Examiner's amendment, or that there are any other issues which can be resolved by a telephone interview, a telephone call to the undersigned agent at (404) 815-6102 or to Jamie L. Greene at (404) 745-2473 is respectfully solicited.

The Commissioner is hereby authorized to charge any deficiencies which may be required or credit any overpayment to Deposit Account Number 11-0855.

Respectfully submitted,

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